

1 BITA RAHEBI (CA SBN 209351)  
brahebi@mofo.com  
2 ALEX S. YAP (CA SBN 241400)  
ayap@mofo.com  
3 ROSE S. LEE (CA SBN 294658)  
roselee@mofo.com  
4 MORRISON & FOERSTER LLP  
707 Wilshire Boulevard, Suite 6000  
5 Los Angeles, California 90017-3543  
Telephone: (213) 892-5200  
6 Facsimile: (213) 892-5454

7 [Additional counsel on signature page]

8 Attorneys for Counter-Defendants,  
MAXLINEAR, INC. and MAXLINEAR  
9 COMMUNICATIONS LLC

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

12 ENTROPIC COMMUNICATIONS,  
13 LLC,

14 Plaintiff,

15 v.

16 DISH NETWORK CORPORATION,  
et al.,

17 Defendants.

18 \_\_\_\_\_  
19 DISH NETWORK CORPORATION;  
20 DISH NETWORK L.L.C.; DISH  
21 NETWORK SERVICE L.L.C.; DISH  
22 NETWORK CALIFORNIA  
SERVICE CORPORATION; AND  
DISH TECHNOLOGIES, L.L.C.,

23 Counter-Claimants

24 v.

25 ENTROPIC COMMUNICATIONS,  
26 LLC; MAXLINEAR, INC.; AND  
MAXLINEAR COMMUNICATIONS  
27 LLC,  
Counter-Defendants.

28 MAXLINEAR'S REPLY ISO MOTION TO DISMISS  
CASE NO. 2:23-CV-1043-JWH-KES

Case No. 2:23-cv-1043-JWH-KES  
(Lead Case)

**REDACTED VERSION OF  
DOCUMENT PROPOSED TO BE  
FILED UNDER SEAL**

**MAXLINEAR, INC. AND  
MAXLINEAR COMMUNICATIONS  
LLC'S REPLY IN SUPPORT OF  
MOTION TO DISMISS**

**(1) AMENDED COUNTERCLAIMS  
BY DISH NETWORK CALIFORNIA  
SERVICE CORPORATION; AND  
(2) COUNTERCLAIMS BY DISH  
NETWORK CORPORATION, DISH  
NETWORK L.L.C., DISH  
NETWORK SERVICE L.L.C., AND  
DISH TECHNOLOGIES, L.L.C.**

Judge: Hon. John W. Holcomb

Action Filed: Feb. 10, 2023

Am. Counterclaims and Counterclaims  
Filed: Jan. 31, 2024

**Hearing:**

Date: March 29, 2024

Time: 9:00 a.m.

Place: Courtroom 9D, Santa Ana

## TABLE OF CONTENTS

	Page	
I.	INTRODUCTION .....	6
II.	DISH'S OPPOSITION VIOLATES THE LOCAL RULES .....	6
III.	ARGUMENT .....	7
A.	Dish's Opposition Confirms That No Dish Counterclaimants Have Standing to Bring the Counterclaims .....	7
1.	MoCA licensing rights do not extend to "all comers" .....	7
2.	The Promoter Agreement and IPR Policy foreclose the Dish Affiliates' Claims .....	8
3.	Dish does not plead any redressable Article III injury .....	10
B.	Count IV: Dish Fails to Plead a Breach of Contract Claim .....	11
1.	Dish does not plead performance .....	11
2.	Dish fails to allege any breach by MaxLinear .....	12
3.	Dish cannot plead breach of a superseded contract .....	12
C.	Count V: Dish Again Fails to Meet the Pleading Standard for Fraud or Negligent Misrepresentation .....	13
D.	Count VI: Dish Again Fails to Plead a Proper Conspiracy Claim .....	15
E.	Count VII: Dish Fails to Plead Quasi-Contract for Restitution / Unjust Enrichment .....	15
F.	Counts VIII, IX, and XI: Dish's Antitrust and UCL Claims Do Not Plausibly State a Claim for Relief .....	16
G.	Dish Does Not Challenge the Futility of Amendment .....	17
IV.	CONCLUSION .....	17

## **TABLE OF AUTHORITIES**

	Page(s)
<b>Cases</b>	
<i>Abuelhawa v. Santa Clara Univ.</i> , 529 F. Supp. 3d 1059 (N.D. Cal. 2021).....	15
<i>Apple, Inc. v. Motorola Mobility, Inc.</i> , No. 11-cv-00178, 2011 WL 7324582 (W.D. Wis. June 7, 2011) .....	8
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009) .....	7
<i>Atl. Richfield Co. v. USA Petroleum Co.</i> , 495 U.S. 328 (1990) .....	17
<i>B. Braun Med., Inc. v. Abbott Lab'ys</i> , 124 F.3d 1419 (Fed. Cir. 1997) .....	16
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007) .....	6, 7
<i>Deakins Holding PTE Ltd. v. NewNet Inv. Grp. LLC</i> , No. 14-cv-02036, 2015 WL 468972 (C.D. Cal. Feb. 4, 2015) .....	9
<i>Delphix Corp. v. Actifio, Inc.</i> , No. 13-cv-04613, 2014 WL 4628490 (N.D. Cal. Mar. 19, 2014).....	13
<i>Diamond v. United States</i> , No. 14-cv-01922, 2015 WL 11215851 (C.D. Cal. May 15, 2015) .....	7
<i>Evolved Wireless, LLC v. Apple, Inc.</i> , No. 15-cv-00542, 2019 WL 831112 (D. Del. Feb. 21, 2019) .....	11
<i>Fahmy v. Hogge</i> , No. 08-cv-1152, 2008 WL 4614322 (C.D. Cal. Oct. 14, 2008).....	6
<i>Fecht v. Price Co.</i> , 70 F.3d 1078 (9th Cir. 1995) .....	14
<i>Gamble v. GMAC Mortg. Corp.</i> , No. 08-cv-05532, 2009 WL 400359 (N.D. Cal. Feb. 18, 2009) .....	12

1	<i>Glob. Hunter Sec., LLC v. MannKind Corp.</i> , No. 12-cv-10638, 2013 WL 2120865 (C.D. Cal. May 14, 2013) .....	9
2		
3	<i>Hangards, Inc. v. Ethicon, Inc.</i> , 601 F.2d 986 (9th Cir. 1979).....	17
4		
5	<i>Hartford Cas. Ins. Co. v. J.R. Mktg., L.L.C.</i> , 61 Cal. 4th 988 (2015).....	15
6		
7	<i>HTC Corp. v. Ericsson</i> , 12 F.4th 476 (5th Cir. 2021).....	8
8		
9	<i>Hurd v. Bos. Sci. Corp.</i> , No. 22-cv-00032, 2023 WL 3564741 (C.D. Cal. Apr. 10, 2023) .....	14
10		
11	<i>Huynh v. Quora, Inc.</i> , No. 18-cv-07597, 2019 WL 11502875 (N.D. Cal. Dec. 19, 2019).....	15
12		
13	<i>In re Innovatio IP Ventures, LLC Patent Litig.</i> , No. 11-cv-09308, 2013 WL 5593609 (N.D. Ill. Oct. 3, 2013) .....	8
14		
15	<i>Kashmiri v. Regent of Univ. of Cal.</i> , 156 Cal. App. 4th 809 (2007).....	9
16		
17	<i>Kendall v. Visa U.S.A., Inc.</i> , 518 F.3d 1042 (9th Cir. 2008).....	16
18		
19	<i>Microsoft Corp. v. Motorola, Inc.</i> , 696 F.3d 872 (9th Cir. 2012).....	8
20		
21	<i>Microsoft Corp. v. Motorola, Inc.</i> , 795 F.3d 1024 (9th Cir. 2015).....	8, 11
22		
23	<i>Microsoft Corp. v. Motorola, Inc.</i> , 854 F. Supp. 2d 993 (W.D. Wash. 2012) .....	8
24		
25	<i>Opperman v. Path, Inc.</i> , 84 F. Supp. 3d 962 (N.D. Cal. 2015).....	11
26		
27	<i>Rack Safety Prod., LLC v. Double Backstop, Inc.</i> , No. 21-cv-02110, 2023 WL 3432250 (C.D. Cal. Mar. 9, 2023).....	12
28		
	<i>Rambus Inc. v. FTC</i> , 522 F.3d 456 (D.C. Cir. 2008).....	17

1	<i>Samsung Elecs. Co. v. Panasonic Corp.</i> , No. 10-cv-03098, 2011 WL 9529403 (N.D. Cal. Aug. 25, 2011) .....	16
3	<i>Schrieber Distribut. Co. v. Serv-Well Furniture Co., Inc.</i> , 806 F.2d 1393 (9th Cir. 1986).....	13
5	<i>Skilstaf, Inc. v. CVS Caremark Corp.</i> , 669 F.3d 1005 (9th Cir. 2012).....	9
7	<i>Smith v. Allstate Ins. Co.</i> , 160 F. Supp. 2d 1150 (S.D. Cal. 2001) .....	14
9	<i>Svenson v. Google Inc.</i> , No. 13-cv-04080, 2016 WL 8943301 (N.D. Cal. Dec. 21, 2016).....	11
10	<i>The H.N. &amp; Frances C. Berger Found. v. Perez</i> , 218 Cal. App. 4th 37 (2013).....	9
12	<i>UMG Recordings, Inc. v. Glob. Eagle Ent., Inc.</i> , 117 F. Supp. 3d 1092 (C.D. Cal. 2015).....	13
14	<b>Statutes and Other Authorities</b>	
15	Cal. Civ. Code § 1638.....	9
16	<b>Local Civil Rules</b>	
17	11-6.1 .....	6
18	11-6.2 .....	6

1       **I. INTRODUCTION**

2           Dish’s claims are premised on the implausible allegation that MaxLinear  
3 “washed” the MoCA RAND obligations from the asserted patents. No party  
4 disputes that the patents are subject to MoCA IPR obligations. Under MoCA’s IPR  
5 Policy, all RAND obligations survive any transfer of essential patents. And, **as**  
6 **Dish’s claims acknowledge, Entropic committed to license its patents on MoCA**  
7 **RAND terms.** Dish argues that implausibility is rarely a basis for dismissal but  
8 cites to a standard overruled by *Twombly* in 2007.

9           None of the Dish entities have standing. The relevant agreements deny  
10 third-party beneficiary rights to the Dish Affiliates. Dish Technologies has no  
11 standing because it has no injury-in-fact.

12          As to Dish’s claims of fraud, conspiracy, and quasi-contract, Dish admits  
13 Rule 9(b) applies but does not plead the time, place, and specific content of the  
14 alleged misrepresentations. Instead, it relies on fact-free conclusory allegations.  
15 Dish’s antitrust and UCL claims likewise lack any factual allegations plausibly  
16 establishing an agreement to “wash” the patents and further fail to plead basic  
17 elements, including competitive harm and antitrust injury.

18          The Court should dismiss this second attempt to plead claims with prejudice.

19       **II. DISH’S OPPOSITION VIOLATES THE LOCAL RULES**

20          Dish’s Opposition (ECF No. 402 (“Opp.”)) contains 8,621 words, is over  
21 20% longer than permitted by Local Civil Rule 11-6.1, and did not include a Local  
22 Civil Rule 11-6.2 certificate of compliance. *See also* ECF No. 13 ¶ 10(b).  
23 MaxLinear’s Motion (ECF No. 371 (“Mot.”)), in contrast, complied with the  
24 court’s limits, even when faced with one pleading between all Dish entities,  
25 including a new party. While the Court has discretion to strike the Opposition brief  
26 entirely, MaxLinear suggests that an appropriate remedy is to disregard the  
27 Opposition after the 7,000th word, which occurs on page 28, line 5. *See, e.g.,*  
28 *Fahmy v. Hogge*, 2008 WL 4614322, at \*2 (C.D. Cal. Oct. 14, 2008).

1       **III. ARGUMENT**

2           Dish has not pled facts sufficient to state a plausible claim, and its ultimate  
3 legal conclusions are contradicted by the facts in its pleadings. Dish boldly claims  
4 that “implausibility” is a “theory that is rarely sufficient to grant a motion to  
5 dismiss.” (Opp. at 8.) Dish argues instead that dismissal is appropriate only when  
6 it is beyond doubt that it can prove “no set of facts” in support of its claims. (Opp.  
7 at 13.) The Supreme Court expressly rejected this standard. *Bell Atl. Corp. v.*  
8 *Twombly*, 550 U.S. 544, 563 (2007); *see also Diamond v. United States*, 2015 WL  
9 11215851, at \*9 n.5 (C.D. Cal. May 15, 2015) (*Twombly* “explicitly overruled” the  
10 “no set of facts” standard) (internal citations omitted). Plausibility has been the  
11 standard for over fifteen years. *Twombly*, 550 U.S. at 547; *Ashcroft v. Iqbal*, 556  
12 U.S. 662, 678 (2009). Under *Twombly*, Dish’s claims should be dismissed.

13       **A. Dish’s Opposition Confirms That No Dish Counterclaimants Have  
14 Standing to Bring the Counterclaims**

15           **1. MoCA licensing rights do not extend to “all comers”**

16           MoCA is a Standards Setting Organization (“SSO”) whose members enter  
17 contracts governing their relationship with the organization. (ECF No. 316 (“Am.  
18 Countercls.”) ¶¶ 22, 25.) The MoCA contracts provide that Affiliates do not have  
19 licensing rights. (See ECF No. 375 (“Promoter Agreement”) § 6; ECF No 360-1  
20 (“IPR Policy”) § 5.1.1.)<sup>1</sup> Dish argues that MoCA members nevertheless must  
21 license on RAND terms to “all comers.” (*Id.* ¶¶ 65-66; Opp. at 10, 14-15.)

22           Dish rests its argument on cherry-picked snippets from cases where—unlike  
23 this case—the relevant SSO voluntarily included non-members within the scope of  
24 its licensing obligations. The Ninth Circuit’s *Microsoft* decisions show only that  
25 that some SSOs limit RAND licensing rights to members and some do not.

26       

---

<sup>1</sup> Dish does not dispute the authenticity of any of documents in the request for  
27 judicial notice (ECF No. 360 (“RJN”)) and has not filed an opposition to the RJN.  
28 Dish’s assertion that its failure to attach the Promoter Agreement is irrelevant—  
because MaxLinear requested judicial notice of it—further reduces any potential for  
authenticity or accuracy concerns. (See Opp. at 23.)

1     *Microsoft Corp. v. Motorola, Inc.*, 696 F.3d 872, 876 (9th Cir. 2012) (“many” SSOs  
2 open licensing to “all comers”); *Microsoft Corp. v. Motorola, Inc.*, 795 F.3d 1024,  
3 1031 (9th Cir. 2015) (discussing the agreement terms of “many” SSOs).

4                 So too with Dish’s other authority. *See HTC Corp. v. Ericsson*, 12 F.4th 476,  
5 481 (5th Cir. 2021) (Ericsson “agreed with ETSI to grant licenses to other  
6 companies” on RAND terms); *In re Innovatio IP Ventures, LLC Patent Litig.*, 2013  
7 WL 5593609, at \*4 (N.D. Ill. Oct. 3, 2013) (the party agreed to grant licenses to an  
8 “unrestricted number of applicants on a worldwide, non-discriminatory basis”);  
9 *Apple, Inc. v. Motorola Mobility, Inc.*, 2011 WL 7324582, at \*10 (W.D. Wis.  
10 June 7, 2011) (“The policies **often** require or encourage [RAND terms for anyone  
11 who requests a license]”) (emphasis added); *Microsoft Corp. v. Motorola, Inc.*, 854  
12 F. Supp. 2d 993, 995 (W.D. Wash. 2012) (same).

13                 Case law recognizing that “many” SSOs adopt a contract term or “often” do  
14 so is a far cry from finding that SSOs cannot limit RAND licensing to members.  
15 (*See* Mot. at 15; *infra* § III.A.2.) To the contrary, those cases necessarily recognize  
16 MoCA’s right to limit its licensing obligations to members as it did in this case.

17                 **2. The Promoter Agreement and IPR Policy foreclose the**  
18                 **Dish Affiliates’ Claims**

19                 Dish argues that it has created “factual questions” on standing, but it points to  
20 no *facts*. Section 6 of the Promoter Agreement is unambiguous:

21                 [REDACTED]

22                 [REDACTED]

23                 [REDACTED]

24                 [REDACTED]

25                 [REDACTED]

(Promoter Agreement § 6 (emphasis added); Mot. at 15; *see also* IPR Policy.) Dish  
affirmatively pled that none of the Dish Affiliates ever executed a membership  
agreement. (*See* Am. Countercls. ¶ 73.) Accordingly, the Dish Affiliates have no

1 rights or privileges under the IPR Policy.

2 Dish relies on the Promoter Agreement to establish standing of Dish  
3 Technologies (Am. Countercls. ¶ 59) but claims that MaxLinear cannot rely on it  
4 for its motion to dismiss. This provides no escape. Dish incorporated into its  
5 counterclaims an “exemplar” Promoter Agreement that has equivalent language.  
6 (Am. Countercls. ¶ 27; ECF No. 316-2 § 6.)

7 Lacking any textual basis, Dish pivots to extrinsic evidence. But extrinsic  
8 evidence cannot contradict an unambiguous contract provision. *Skilstaf, Inc. v.*  
9 *CVS Caremark Corp.*, 669 F.3d 1005, 1017 (9th Cir. 2012).<sup>2</sup> And, Dish’s extrinsic  
10 evidence does not support a different result. First, the law does not require RAND  
11 licensing for all comers. (See Sec. III.A.1, *supra*.) Second, Section 6 is specific  
12 about [REDACTED] and therefore  
13 controls.<sup>3</sup> See *Kashmiri v. Regent of Univ. of Cal.*, 156 Cal. App. 4th 809, 831  
14 (2007) (cited by Dish, Opp. at 17); see also Cal. Civ. Code § 1638 (“The language  
15 of a contract is to govern its interpretation, if the language is clear and explicit, and  
16 does not involve an absurdity.”). Third, Section 6 [REDACTED]  
17 [REDACTED].

18 Dish relies on board documents that refer to DISH to argue that course of  
19 conduct varies the unambiguous terms of Section 6. (See Opp. at 17-18.) Course  
20 of conduct is only relevant “in construing an ambiguous contract.” *The H.N. &*  
21 *Frances C. Berger Found. v. Perez*, 218 Cal. App. 4th 37, 45 (2013). Moreover,  
22 any course of conduct must relate to the “contracting ‘parties’ practical construction  
23 of a contract, as shown by their actions. . . .” *Id.* at 45 (citations omitted). Here, the

24 <sup>2</sup> Dish’s cases do not require a contrary finding. See *Glob. Hunter Sec., LLC v.*  
25 *MannKind Corp.*, 2013 WL 2120865, at \*6 (C.D. Cal. May 14, 2013) (applying NY  
law and declining to dismiss based on a proffered definition of an ambiguous term  
from “investopedia.com”); *Deakins Holding PTE Ltd. v. NewNet Inv. Grp. LLC*,  
26 2015 WL 468972, at \*5 (C.D. Cal. Feb. 4, 2015) (applying NY law on a motion for  
summary judgment and observing a court’s primary objective is to give effect to the  
contract language chosen by the parties).

27 <sup>3</sup> The Bylaws [REDACTED]. (See ECF  
28 No. 372 at 41; ECF No. 316-1 § 3.5-3.6.) There is no allegation of [REDACTED].

1 only question is whether MoCA granted non-member Affiliates any rights under  
2 the IPR Policy. None of Dish's course of conduct allegations speak to that issue,  
3 and the bylaws are clear that membership must comply with the Promoter  
4 Agreement. (Am. Countercls. ¶ 73; *see* ECF No. 372 at 42-43 ( [REDACTED]  
5 [REDACTED]  
6 [REDACTED]); 316-1 § 3.9 (same).)

7 **3. Dish does not plead any redressable Article III injury**

8 Dish's claims also should be dismissed because they do not connect  
9 MaxLinear's alleged misconduct with the alleged injury to any Dish entity. Each of  
10 Dish's claims hinges on the theory that MaxLinear acted to "wash" the asserted  
11 patents of RAND obligations because it did not include some (unspecified)  
12 language in its transfer of those patents to Entropic.

13 [REDACTED]  
14 [REDACTED] (ECF No. 316-7 § 5.7.) But even accepting Dish's  
15 allegation, no such omission of language could have caused Dish's alleged injury.  
16 First, MoCA's IPR Policy provides that its limited licensing obligations bind  
17 successors regardless of whether they are stated in an assignment. (IPR Policy  
18 § 5.1.2.) Second, Entropic confirmed its commitment to licensing on RAND terms  
19 well before filing any claims against the Dish Affiliates. (Am. Countercls. ¶ 52;  
20 RJN Ex. D (ECF No. 375).) Third, each of Entropic, Dish, and MaxLinear agrees  
21 the MoCA RAND commitment was unaffected by MaxLinear's transfer. (Mot. at  
22 18; Am. Countercls. ¶ 4; ECF No. 363-1 at 8, 17-18 (Entropic reaffirming its  
23 MoCA RAND commitment).) Accordingly, there is no causation.

24 Dish Technologies also could not have suffered any injuries from  
25 MaxLinear's alleged conduct because it is not a defendant. It injected itself solely  
26  
27  
28

1 to assert counterclaims, unlike the parties in Dish’s cited authority.<sup>4</sup> *See Microsoft*,  
2 795 F.3d at 1050 (attorney fees against party who brought action in violation of  
3 good faith and fair dealing); *Evolved Wireless, LLC v. Apple, Inc.* 2019 WL  
4 831112, at \*6 (D. Del. Feb. 21, 2019) (similar). Nor does the Opposition establish  
5 that Dish Technologies [REDACTED]—merely the  
6 conclusory assertion that Dish Technologies was once called EchoStar  
7 Technologies. (*Compare* Mot. at 4 *with* Opp. at 14.) Given the convoluted web of  
8 Dish entities, this is not enough to plausibly establish standing.

9           **B. Count IV: Dish Fails to Plead a Breach of Contract Claim**

10           **1. Dish does not plead performance**

11           Dish falsely asserts that it alleged a “request, in writing” (Opp. at 18 (citing  
12 Am. Countercls. ¶ 50)). To the contrary, paragraph 50 alleges that certain  
13 individuals had a “discussion,” “[o]n [a] call,” in which they requested a licensing  
14 proposal. Dish is further incorrect that former MoCA members do not need to  
15 make a written request. (*See* Opp. at 18 n. 5.) Section 7.1 (or Section 7.2 of the  
16 superseded version of the IPR Policy) provides that any entitlement to a license  
17 offer is still “under Section 5.1.” The procedure for requesting a license is the same  
18 for current and former members.

19           The first allegation of any potential *written* request is March 31, 2023, after  
20 Entropic had filed suit. (*See* Am. Countercls. ¶ 54.) And both counterclaim  
21 Exhibit 9 and Exhibit C to MaxLinear’s RJN demonstrate facially that Dish  
22 Network L.L.C.—and not Dish Technologies—engaged in the written requests for  
23 a RAND license after the suit was filed. (ECF Nos. 316-8, 373.) “Where an  
24 exhibit to a pleading is inconsistent with the pleading, the exhibit controls.”

25           <sup>4</sup> Nor is Dish Technologies entitled to seek nominal damages to establish standing.  
26 (*See* Opp. at 20 n.6.) Its authority addressed only breach of contract, and courts  
27 have since held that “a plaintiff still must show the *fact* of injury in order to have  
28 Article III standing.” *Svenson v. Google Inc.*, 2016 WL 8943301, at \*10 (N.D. Cal.  
Dec. 21, 2016) (emphasis in original); *see also Opperman v. Path, Inc.*, 84 F. Supp.  
3d 962, 990–91 (N.D. Cal. 2015) (nominal damages availability “does not relieve  
the plaintiff of proving injury.”) (internal citation omitted).

1      *Gamble v. GMAC Mortg. Corp.*, 2009 WL 400359, at \*3 (N.D. Cal. Feb. 18, 2009).  
2      Dish uses the artifice of combining the counterclaims of five separate entities into  
3      one pleading and then collectively referring to them as “DISH” to try to hide this  
4      fact. No Dish entity performed and there was no breach.

5                  **2.      Dish fails to allege any breach by MaxLinear**

6                  Again, Dish attempts to distract and create a factual dispute where there is  
7      none. (*See* Opp. at 23.) Dish explicitly pled: “Entropic committed ‘to licensing its  
8      patents that cover MoCA technology on reasonable terms, without discrimination  
9      among similarly-situated providers (often called ‘RAND terms’).’” (Am.  
10     Countercls. ¶ 52.) This coupled with [REDACTED]  
11     show that Entropic was attempting to negotiate a license in compliance with § 5.1.1  
12     of the IPR Policy. (*See* Mot. at 22.) The Patent Purchase Agreement between  
13     MaxLinear and Entropic [REDACTED]. (ECF  
14     No. 316-7 §5.7 and Ex. I; *see also* Mot. at 21-22; ECF No. 363-1 at 17-18.) The  
15     IPR Policy §5.1.2 states that “the licensing obligations under this IPR Policy are  
16     intended to be binding (e.g., as encumbrances) on all successors-in-interest  
17     regardless of whether such provisions are included.” (IPR Policy § 5.1.2.) Dish  
18     pleads no facts to the contrary.

19                  **3.      Dish cannot plead breach of a superseded contract**

20                  Dish does not dispute that the 2011 MoCA IPR policy was superseded.  
21     (Mot. at 19-20.) Instead, Dish contends that MaxLinear does not have caselaw.  
22     (Opp. at 23.) But this ignores *Rack Safety Prod., LLC v. Double Backstop, Inc.*,  
23     cited at page 20 of the Motion, where the court dismissed breach claims with  
24     prejudice because they were based on a contract that was superseded at the time of  
25     the alleged conduct. *See* 2023 WL 3432250, at \*5 (C.D. Cal. Mar. 9, 2023).

26                  Finally, Dish is wrong that “the relevant sections of the IPR Policy are the  
27     same between the 2011 and the 2017 versions.” (Opp. at 23.) Some relevant  
28     sections are equivalent, but Section 5.1.1—the key provision regarding the

1 requirement to offer RAND licenses—and Section 5.1.2—a provision MaxLinear  
2 allegedly breached—both differ. (See Mot. at 20 n. 6 (explaining differences).)

3 **C. Count V: Dish Again Fails to Meet the Pleading Standard for**  
4 **Fraud or Negligent Misrepresentation**

5 Dish acknowledges that Counts V-VII for fraud, conspiracy, and  
6 quasi-contract are “fraud-related” and agrees its fraud allegations are subject to the  
7 heightened pleading requirement of Rule 9(b). (Opp. at 25.)

8 Dish’s Opposition points to no factual allegations setting forth the requisite  
9 who, what, when, and where of the supposed fraud. *See Schrieber Distribut. Co. v.*  
10 *Serv-Well Furniture Co., Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986). Dish can do no  
11 better than promising that the Court should “simply read[] the counterclaim  
12 complaint.” (Opp. at 25-26.) But the counterclaims are merely a collection of  
13 vague and conclusory allegations, paired with assertions on “information and  
14 belief.” *See Delphix Corp. v. Actifo, Inc.*, 2014 WL 4628490, at \*2 (N.D. Cal.  
15 Mar. 19, 2014) (information and belief pleading “creates a further inference that  
16 plaintiff likely lacks knowledge of underlying facts to support the assertion, and is  
17 instead engaging in speculation to an undue degree”). Far from explaining the  
18 Rule 9(b) basis for its fraud claims, the Opposition confirms that Dish is relying  
19 only on its conclusory allegations that MaxLinear breached its commitment to  
20 MoCA. Dish does not identify any duty or conduct independent of the MoCA  
21 commitment, so any fraud claim is barred by the economic loss rule. *See UMG*  
22 *Recordings, Inc. v. Glob. Eagle Ent., Inc.*, 117 F. Supp. 3d 1092, 1104 (C.D. Cal.  
23 2015) (California courts find “tort claims barred in cases in which one party  
24 breached a purported contract that it allegedly never intended to perform”).

25 Dish claims that it pled a “back-and-forth concerning whether the patents are  
26 subject to RAND.” (Opp. at 26 (citing Am. Countercls. at ¶¶ 36-57).) This is not  
27 correct. Dish does not plead that Entropic ever disputed its MoCA RAND  
28 commitment. (Am. Countercls. at ¶ 52.) Dish also claims MaxLinear’s alleged

1 failure to identity patents subject to SSO commitments in its 2015 Annual Report  
2 (*id.* ¶ 116) was fraudulent. Dish does not claim, however, that MaxLinear had any  
3 obligation to include such a discussion in that report.

4 Dish’s Opposition also concedes that it ***does not know*** whether MaxLinear  
5 lacked a basis for believing that it would comply with MoCA’s policies at the time  
6 of its commitment or intended to deceive Dish. (Opp. at 27.) Dish claims its  
7 allegation that MaxLinear later acted inconsistently with its commitment is enough.  
8 (*Id.*) As explained in the Motion, this does not suffice. (*See* Mot. at 23-24.)

9 Assuming that a defendant fraudulently intended to not abide by a contract  
10 simply because it later breached “would allow ‘every breach of contract [to]  
11 support a claim of fraud so long as the plaintiff adds to his complaint a general  
12 allegation that the defendant never intended to keep her promise.’” *Smith v.*  
13 *Allstate Ins. Co.*, 160 F. Supp. 2d 1150, 1154 (S.D. Cal. 2001) (quoting *Richardson*  
14 *v. Reliance Nat’l Indem. Co.*, 2000 WL 284211, at \*5 (N.D. Cal. Mar. 9, 2000)).  
15 Dish has not adequately pled knowledge of falsity or intent to induce reliance, and  
16 its authority does not establish otherwise. *Fecht v. Price Co.*, 70 F.3d 1078, 1083  
17 (9th Cir. 1995) (circumstantial evidence permissible if it “explains how and why the  
18 statement was misleading when made,” such as “contemporaneous statements  
19 indicating that the defendant knew all along that the earlier statement was false”).

20 Moreover, with respect to the “who” requirement, “when the defendant is an  
21 entity, a complaint generally must also identify the person who made the false  
22 representations on behalf of the entity.” *Hurd v. Bos. Sci. Corp.*, 2023 WL  
23 3564741, at \*3 (C.D. Cal. Apr. 10, 2023) (Holcomb, J.) (quotation and citation  
24 omitted). Dish’s reliance on an opinion that reached its conclusion due to the  
25 movant’s lack of cited authority is misplaced. (Opp. at 27.)

26 Finally, Dish claims its conclusory assertion that it reasonably relied upon  
27 representations of MoCA participants “when deciding what technology to utilize” is  
28 sufficient. (Opp. at 26.) Leaving aside its lack of factual content, this conclusory

1 allegation is irreconcilable with Dish’s assertions in its answer that it “lacks  
2 knowledge or information sufficient” to know whether it utilizes the portions of the  
3 MoCA standards covered by the asserted patents and, in one case, its denial of  
4 utilizing a portion of the MoCA standard (Am. Ans. ¶¶ 84, 118, 152, 186, 220,  
5 288, 322, 356, 424, 458). If Dish does not know whether it practices the standard  
6 or denies its practice, it cannot plausibly assert it relied on any MaxLinear  
7 statement to adopt the standards. (*See, e.g.*, Mot. at 24; Am. Countercls. ¶ 39.)

8           **D. Count VI: Dish Again Fails to Plead a Proper Conspiracy Claim**

9           Dish does not dispute that if the underlying fraud claim is dismissed, then its  
10 conspiracy claim must be dismissed as well. (Mot. at 24-25.) The conspiracy  
11 claim also fails because the counterclaims are bereft of any factual allegation  
12 showing that MaxLinear and Entropic formed a conspiracy, acted in furtherance of  
13 the conspiracy, or damaged Dish. (*Id.* at 25.) Entropic states clearly in its own  
14 motion to dismiss that it understood that the transfer of patents was subject to the  
15 MoCA RAND obligations. (ECF No. 363-1 at 17-18.)

16           **E. Count VII: Dish Fails to Plead Quasi-Contract for Restitution /  
17 Unjust Enrichment**

18           Dish maintains that unjust enrichment is a valid claim in California, but the  
19 authority on which Dish relies did not resuscitate unjust enrichment as a cause of  
20 action. *See Abuelhawa v. Santa Clara Univ.*, 529 F. Supp. 3d 1059, 1070–72 (N.D.  
21 Cal. 2021) (California courts have since confirmed unjust enrichment is not a cause  
22 of action after *Hartford Cas. Ins. Co. v. J.R. Mktg., L.L.C.*, 61 Cal. 4th 988 (2015)).

23           Under California’s substantive law, a party cannot assert a quasi-contract  
24 claim while simultaneously asserting a valid and enforceable contract. (Mot. at  
25 25-26.) Dish asserts that this is procedural issue, and Rule 8(d) should allow Dish  
26 to assert both claims. (Opp. at 29.) Not so. Faced with this exact fact pattern, the  
27 court in *Huynh v. Quora, Inc.*, 2019 WL 11502875, at \*12 (N.D. Cal. Dec. 19,  
28 2019) dismissed the quasi-contract claim without leave to amend. Here, “there is

1 no dispute about the existence or validity of the express contract,” and Dish does  
2 not allege that the IPR Policy “is void” or otherwise “rescinded,” so it “cannot  
3 plead alternative theories that necessarily fail where an express contract defines the  
4 rights of the parties.” *Id.* The Dish Affiliates’ lack of standing to enforce the IPR  
5 Policy does not bear on its validity. Dismissal with prejudice is merited.

6 Dish acknowledges that its quasi-contract claim is “fraud-related” (Opp. at  
7 25) but fails to satisfy Rule 9(b)’s pleading requirements with respect to its fraud  
8 and negligent misrepresentations claim. The quasi-contract claim is dependent on  
9 the allegations of its fraud claim and fails for the same reasons.

10 **F. Counts VIII, IX, and XI: Dish’s Antitrust and UCL Claims Do Not  
11 Plausibly State a Claim for Relief**

12 Dish does not dispute that its antitrust and UCL claims rise or fall together.  
13 (*See* Mot. at 28-29; Opp. at 29-30.)<sup>5</sup> These claims should be dismissed because  
14 Dish does not plead any facts to support its conclusory allegations that Entropic and  
15 MaxLinear agreed to “wash” the asserted patents. *See Kendall v. Visa U.S.A., Inc.*,  
16 518 F.3d 1042, 1047-48 (9th Cir. 2008). What little relevant factual allegations do  
17 appear in the counterclaims establish the contrary: having obtained the patents  
18 through the transfer agreement, Entropic reaffirmed its commitment to license on  
19 RAND terms. (Am. Countercls. ¶ 52.) But even if there was an agreement to  
20 “wash” the patents, it could not have unreasonably restrained competition because  
21 the alleged goal was a legal impossibility. Given that it was a legal impossibility,  
22 the alleged conspiracy is implausible. Dish’s Opposition does not address this.

23 Dish tries to save its antitrust claims by arguing that Counterclaim ¶ 145

24 <sup>5</sup> Dish concedes that it cannot plead a counterclaim for patent misuse but purports  
25 to assert it as a basis for § 17200 liability. (Opp. at 32.) As the Motion establishes  
26 and Dish does not dispute, patent misuse is merely an “equitable defense.” *B. Braun Med., Inc. v. Abbott Lab’ys*, 124 F.3d 1419, 1427 (Fed. Cir. 1997). It gives  
27 rise to no claim for liability, *id.*, and not an “unlawful” act for purposes of § 17200.  
28 *See Samsung Elecs. Co. v. Panasonic Corp.*, 2011 WL 9529403, at \*6 (N.D. Cal.  
Aug. 25, 2011) (dismissing § 17200 claim where plaintiff failed to raise claim  
under independent law). Dish cites no authority otherwise and the Court should  
reject its attempt to bring a misuse claim through the back door.

1 sufficiently alleges harm to competition. (Opp. at 30.) There, Dish alleges “that  
2 Entropic and MaxLinear attempted to ‘wash’ the asserted patents of  
3 RAND-obligations in order to charge exorbitantly-high licensing fees . . . thus  
4 driving up the cost of home networking and home television services for end  
5 users.” (Am. Countercls. ¶ 145.) Even if MaxLinear deceived MoCA and its  
6 members (which it did not) and end users in the alleged home networking and home  
7 television services markets paid higher prices, this alone is not harm to competition.  
8 *Rambus Inc. v. FTC*, 522 F.3d 456, 466-67 (D.C. Cir. 2008).

9         Dish also apparently misunderstands the antitrust injury element of an  
10 antitrust claim. It contends that its allegation of harm to the “relevant markets” is  
11 sufficient. (Opp. at 31.) The antitrust injury question is whether the harm Dish  
12 alleges **Dish** suffered is antitrust injury; it is not some generalized injury to the  
13 marketplace. *Atl. Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 334 (1990).  
14 Dish claims only patent damages and litigation costs, which are not antitrust  
15 injuries. *See Rambus*, 522 F.3d at 466-67 (patent damages); *Hangards, Inc. v.*  
16 *Ethicon, Inc.*, 601 F.2d 986, 996 (9th Cir. 1979) (patent litigation costs).

17         Finally, the *Noerr-Pennington* doctrine does apply. Dish does not contend  
18 that it is a victim of a sham patent infringement suit, and the Court will apply a  
19 RAND rate to damages, where appropriate. Thus, Dish’s only complaint is that it is  
20 incurring litigation costs, which are not antitrust injury under *Noerr-Pennington*.

21         **G. Dish Does Not Challenge the Futility of Amendment**

22         This is the second attempt by the Dish family of companies to state claims.  
23 Despite months of time, adding a new entity with no notice, and greatly exceeding  
24 the word limit, the Opposition fails to adequately address the failings in Dish’s  
25 pleadings and does not dispute that amendment would be futile. (*See* Mot. at 30.)  
26 Dismissal should be with prejudice.

27         **IV. CONCLUSION**

28         The Court should dismiss the counterclaims with prejudice.

1 Dated: March 15, 2024  
2

MORRISON & FOERSTER LLP

3  
4 By: /s/ Bita Rahebi  
Bita Rahebi

5 BITA RAHEBI (CA SBN 209351)  
6 brahebi@mofo.com  
7 ALEX S. YAP (CA SBN 241400)  
8 ayap@mofo.com  
9 ROSE S. LEE (CA SBN 294658)  
10 roselee@mofo.com  
11 MORRISON & FOERSTER LLP  
12 707 Wilshire Boulevard, Suite 6000  
13 Los Angeles, California 90017-3543  
14 Telephone: (213) 892-5200  
15 Facsimile: (213) 892-5454

16 RICHARD S.J. HUNG (CA SBN  
17 197425)  
18 rhung@mofo.com  
19 MORRISON & FOERSTER LLP  
20 425 Market Street,  
San Francisco, California 94105-  
21 2482  
Palo Alto, California 94304-1018  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

22 BRADLEY LUI (CA SBN 143088)  
blui@mofo.com  
MORRISON & FOERSTER LLP  
23 2100 L Street, NW, Suite 900  
Washington, DC 20037-1679  
Telephone: (202) 887-1500  
Facsimile: (202) 887-0763

24  
25 Attorneys for Counter-Defendants  
26 MAXLINEAR, INC. and  
27 MAXLINEAR  
28 COMMUNICATIONS LLC

1                   **CERTIFICATE OF COMPLIANCE**

2                   The undersigned, counsel of record for Counter-Defendants MAXLINEAR,  
3 INC. and MAXLINEAR COMMUNICATIONS LLC, certifies that this brief  
4 contains 4223 words, which complies with the word limit of L.R. 11-6.1.

5  
6 Dated: March 15, 2024

By: /s/ Bita Rahebi  
7                   Bita Rahebi

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28